

NOTICE OF PUBLICATION WITH THE INTENT TO ADOPT ORDINANCE 22-01 an ordinance to amend the Code of the City of Las Vegas by adding a new Article XIV to Chapter 12, Traffic Regulations, to be entitled "Automated Speed Enforcement". This Ordinance is enacted pursuant to Sections 2.02 of the City of Las Vegas Municipal Charter, and is an exercise of the City's home rule powers.

Notice is hereby given that the City Council of the City of Las Vegas, NM, at their Regular meeting held on February 9, 2022, approved for publication Ordinance No. 22-01 with the intent to adopt at their regularly scheduled meeting to be held on March 9, 2022. A complete copy of Ordinance 22-01 may be obtained at the office of the City Clerk located at City Hall, 1700 North Grand Avenue, Las Vegas, New Mexico or on the City of Las Vegas website at: www.lasvegasnm.gov.

City of Las Vegas

/s/Casandra Fresquez
City Clerk

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CITY OF LAS VEGAS, NEW MEXICO

Ordinance No. 22-01

AN ORDINANCE TO AMEND the Code of the City of Las Vegas by adding a new Article XIV to Chapter 12, to be entitled “Automated Speed Enforcement”. This Ordinance is enacted pursuant to Sections 2.02 of the City of Las Vegas Municipal Charter, and is an exercise of the City of Las Vegas home rule powers.

BE IT ENACTED by the Governing Body of the City of Las Vegas as follows:

Section 1. The Code of the City of Las Vegas, is hereby amended by adding to Chapter 12 “Traffic Regulations” a new Article XIV entitled “Automated Speed Enforcement” to read as follows:

§ 12-14-1 SHORT TITLE. This article may be referred to as the Automated Speed Enforcement Ordinance or “ASE”.

§ 12-14-2 DEFINITIONS. For the purposes of the ASE, the following definitions shall apply unless the context clearly indicates or requires a different meaning:

ASE SYSTEM FINE. The fine assessed for a violation, as set forth in Section 12-6-1.8, or other provision under this article (or successor article of the city’s codified ordinances).

ASE SYSTEM FINE NOTICE. A written document mailed to the address of the registered owner or nominee stating that a violation has occurred and payment is due.

CAMERA SPEED DEVICE or “CSD.” The instrument that detects a violation of this article. The definition includes but is not limited to cameras and electronic speed detection equipment reasonably relied upon by police officers.

CONTRACTOR. A person or entity that enters into a contract with the City of Las Vegas to provide photographic or electronic evidence of a speed violation through a CSD.

DEPARTMENT. City of Las Vegas Police Department.

DRIVER. The person operating the vehicle at the time of a violation.

IDENTIFY. To submit information on the actual driver of a vehicle sufficient to allow the Department to locate and notify the driver in lieu of the registered owner, including but not limited to, the name, address and telephone number of the driver.

NOMINATE or NOMINATION. A written statement by the registered owner identifying the actual driver of a vehicle as the responsible party for a violation.

NOMINEE. The person or entity identified by the registered owner as the driver or responsible party of the vehicle at the time of the violation.

NUISANCE. The act of operating a vehicle in violation of this article.

OWNER’S AFFIDAVIT. A written statement signed under oath and submitted to the

Department or the Contractor under penalty of perjury by the registered owner of a vehicle who asserts therein that the registered owner was not driving the vehicle at the time of a violation.

REGISTERED OWNER. Pursuant to the State of New Mexico records, the owner of the vehicle involved in the alleged violation, at the time the violation occurred.

RESPONDENT. An accused violator who has received an ASE System Fine Notice and requested a hearing.

§ 12-14-3 VIOLATION. Any action or conduct constituting a violation under 12-6-1.8 of this Code of Ordinances, NMSA 66-7-104 of the New Mexico State Motor Vehicle Code, or any other city or state laws pertaining to speeding is a violation. This article does not apply to emergency vehicles responding to an emergency.

A. Violation recorded by CSD. The Contractor shall provide all evidence of a CSD-recorded violation to the Department. The Department shall review all CSD evidence provided by the Contractor.

(1) If the Department determines that a violation has occurred and that a citation is warranted, the Department shall cause an ASE fine notice to be delivered to the vehicle's registered owner.

(2) The registered owner is strictly and vicariously liable for the violation unless one of the defenses herein applies. If there is more than one registered owner, all registered owners shall be jointly and severally liable for the violation.

B. ASE fine notice.

(1) The ASE fine notice shall state and contain the name of the registered owner or nominee, the effective date of the ASE fine notice, the type of violation, the date, time, and location of the violation, a picture of the violation, the license plate number of the vehicle, the name and identification of the issuing Department official, the amount of the fine, the response due date and the return address. The ASE fine notice shall inform the registered owner or the nominee of the option to complete community service in lieu of payment of the ASE fine, and the right to request a hearing.

(2) Delivery. The ASE fine notice shall be delivered to the address of, posted on the property of, or personally served upon, the registered owner according to the address registered with the Department of Motor Vehicles, from information obtained from any court, from Department Records, or from any other documentation or records reasonably relied upon by City employees, or it shall be delivered to the address of, posted on the property of, or personally served upon, the nominee according to the owner's affidavit.

C. Response to an ASE fine notice. The registered owner shall timely pay the fine, elect to complete community service, file an owner's affidavit making a nomination, or request a hearing by the response due date as indicated by the ASE fine notice.

D. Nomination. A registered owner not driving the car at the time of the violation may either accept the responsibility for the violation and pay the ASE fine, or identify the driver so an ASE fine notice can be sent to the driver.

(1) If the registered owner claims that another person was driving the vehicle at the time of the violation, the registered owner shall so indicate on the owner's affidavit and identify the person who was driving the vehicle. Any registered owner who submits an owner's affidavit does so under penalty of perjury.

(2) A new ASE fine notice will be delivered to the nominee. If the nominee successfully appeals the allegation that they were the driver, the City may proceed against the registered owner. The registered owner shall be responsible for payment of the ASE fine if the City cannot assert jurisdiction over the nominee, subject to the remaining defenses available.

E. Default. If the city does not receive timely payment of the ASE fine, an election to complete community service, a nomination, or a request for a hearing, by the response due date as indicated by the ASE fine notice, the registered owner shall be in non-discretionary default. If the default is not cured, the City may pursue all remedies for collection of a debt and is entitled to an award of reasonable attorney's fees incurred.

F. Hearing. In the event of a demand for a hearing, the Judge or Hearing Officer shall hold a hearing. The hearing shall be conducted following the rules of evidence and civil procedure for the magistrate courts. The Department has the burden to prove the violation by a preponderance of the evidence. The respondent has the burden to prove any defenses by a preponderance of the evidence. If the Department prevails, the Respondent shall pay the fine within 30 consecutive days from the date of the decision. Following a hearing, and upon Respondent posting a bond in the amount of the fine, the respondent may appeal the decision of the Judge/Hearing Officer to the District Court within 30 days of the decision.

G. Defenses. At a timely requested hearing, the Respondent may present the following defenses:

(1) The vehicle was stolen or otherwise being driven without the registered owner's knowledge or permission at the time of the alleged violation. The registered owner shall have a relevant police report pertaining to the theft as a precondition to the owner qualifying for this defense.

(2) The ownership of the vehicle had lawfully been transferred and conveyed from the registered owner to another person before the time of the alleged violation.

(3) The evidence does not show that a violation was committed.

(4) The respondent is the registered owner, but was not driving the vehicle at the time of the violation. To assert this defense, the registered owner shall identify the actual driver and comply with the nomination provisions in subsection (D) of this section.

(5) The registered owner did not receive notice because the ASE fine notice was not mailed to the address of record with the New Mexico Department of Motor Vehicles or otherwise Respondent's constructive notice was not received by Respondent.

H. Penalty.

(1) A violation constitutes a non-discretionary civil infraction punishable by a fine of \$100.00 or completion of four (4) hours of community service.

(2) A violator may elect service to the City as an alternative to payment of fines.

A violator who elects the option of service to the City in lieu of payment of a fine does so voluntarily and is entitled to none of the benefits conferred upon City employees, including, without limitation, worker's compensation or the payment of any wages or benefits. The City is not responsible for damages incurred as a result of such service except as otherwise provided by law. The person seeking relief hereunder shall timely request the option of service to the City in lieu of payment of a fine. Services shall be rendered in not less than full hour increments and shall be credited against the fine payable at a rate of the federal minimum wage per hour. The Mayor or the Mayor's designee shall establish procedures for administering this paragraph including, but not limited to, the nature of services that may be performed, the timeframe in which a respondent must complete their community service, and consequences for failure to complete community service.

§ 12-14-4 ADMINISTRATION.

A. The Department shall be responsible for administration of this article. Reasonable rules and regulations may be promulgated by the City manager or the City Managers designee to carry out the intent and purpose of this article.

B. The revenue generated through ASE shall go into the City's general fund.

C. The Contractor hired to aid in the administration of this program will not be compensated based on the number of citations issued. The Contractor shall be compensated by a flat fee.

D. An independent third-party lab shall perform a calibration test on the CSD instruments used for speed detection at least annually.

Section 2. Severability. The provisions of this ordinance are declared to be severable, and if any portion of this ordinance, for any reason, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this ordinance.

Section 3. Effective Date. This ordinance shall become effective upon the execution by the Mayor and the affirmative vote of the majority of the Governing Body.

PASSED, ADOPTED and ENACTED this _____ day of February, 2022.

Mayor Louie A. Trujillo

ATTEST:

Reviewed and approved as to legal sufficiency only:

Casandra Fresquez, City Clerk

Scott Aaron, City Attorney
